

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL L. MONTALVO,

Defendant.

No. 2:89-cr-00062-WBS-GGH

ORDER

Defendant, a federal prisoner proceeding pro se, has filed a motion to correct an illegal sentence pursuant to Federal Rule 35(a). The court referred this matter to the assigned United States Magistrate Judge on June 1, 2015, pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 11, 2015, the magistrate judge filed findings and recommendations herein which were served on both parties and which contained notice to both parties that any objections to the findings and recommendations were to be filed within thirty (30) days. Those findings recommended both that defendant's motion be denied, and that defendant be labeled a vexatious litigant. Defendant has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper

analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed August 11, 2015, are adopted in full;

2. Defendant's amended motion to correct an illegal sentence, ECF No. 1114, is

DENIED;

3. Defendant's motion for reconsideration, ECF No. 1117, is DENIED;

4. Defendant's request for judicial notice, ECF No. 1119, is DENIED;

5. Defendant is precluded from filing further motions or requests challenging his conviction or sentence in this case or any related case, except as follows:

With respect to a 28 U.S.C. section 2255 motion, petitioner may file such a motion if, and only if he files a copy of the order of the Ninth Circuit permitting a successive filing; see 28 U.S.C. 2255 (h);

Any other filing in this case or a related case, if it is to be reviewed on the merits, must be accompanied with a declaration by defendant/petitioner Montalvo certifying, (a) that he has not previously raised the claim(s) set forth in the filing, and setting forth a case or cases, by a federal appellate court or the Supreme Court, or statute, which expressly permits retroactive application of an appellate/Supreme Court holding or statute directly applicable to the claims made in the new filing, or (b) if the claim(s) made have previously been made to this court, Montalvo shall so certify and cite the appellate or Supreme Court case or statute which expressly permits retroactive application of an appellate/Supreme Court holding or statute directly applicable to the claims made in the new filing;

If Montalvo does not satisfy the requirements stated above, or certifies falsely, any judge of this court may reject the filing without further adjudication of the merits of the filing.

Dated: November 6, 2015



WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE